

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
RHODIA INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Rhodia Inc. (Rhodia or Defendant) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413, for injunctive relief and civil penalties for violations at Rhodia's eight sulfuric acid plants nationwide of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, the Prevention of Significant Deterioration (PSD) provisions of the Act; Part D of Title I of the Act 42 U.S.C. §§ 7501-7515, the non-attainment New Source Review (nonattainment NSR) provisions of the Act; certain New Source Performance Standards (NSPS) promulgated under Section 111 of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. § 7661; and the federally enforceable State Implementation Plans (SIPs) for Indiana, Louisiana, Texas and California approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporate and/or implement the above-listed federal

requirements. Specifically, Rhodia constructed, modified, and/or reconstructed its eight sulfuric acid plants. Following such construction, modification and/or reconstruction, Rhodia operated its sulfuric acid plants without first obtaining appropriate permits authorizing the construction, modification and/or reconstruction and subsequent operation of the plants; failed to install and employ the best available control technology or attain the lowest achievable emission rate to control emissions of sulfur dioxide (SO₂) and acid mist as the Act, the applicable federal regulations and the SIPs require; and failed to comply with the applicable New Source Performance Standards.

JURISDICTION AND VENUE

2. This Court has jurisdiction of the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the violations which constitute the basis of this Complaint occurred in this District at one of Rhodia's sulfuric acid plants.

NOTICES

4. The United States has provided notice of the violations of the Act alleged herein, to each of the four states in which Rhodia's sulfuric acid plants are located, in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

5. The 30-day period established in Section 113, 42 U.S.C. § 7413, between the notice of violation provided by the United States and the commencement of this civil action has elapsed.

THE DEFENDANT

6. Rhodia is the North American unit of Rhodia SA, a specialty chemical company. Rhodia is a Delaware corporation which owns and operates eight sulfuric acid production units at six sulfuric acid plants. Rhodia is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. At all times relevant to this Complaint, Rhodia owned and operated the following sulfuric acid production units: Baytown, Texas; Baton Rouge #1 and #2, Louisiana; Dominguez, California; Hammond, Indiana; Houston, Texas #2 and #8; and Martinez, California..

STATUTORY AND REGULATORY BACKGROUND

8. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), the Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

The National Ambient Air Quality Standards

9. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with presence of the air pollutant in the ambient air. Pursuant to Section 109, 42, U.S.C. § 7409, at 40 C.F.R. § 50.5, EPA has identified and promulgated NAAQS for SO₂.

10. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the

NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is designated as “unclassifiable.”

11. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

The Prevention of Significant Deterioration Requirements

12. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are herein referred to as the “PSD regulations.”

13. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i)(1) (currently 40 C.F.R. § 52.21(a)(2)(iii)) prohibits the construction, major modification, and subsequent operation of a major emitting facility in an area designated as attainment or unclassifiable unless a PSD permit has been issued.

14. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” as, *inter alia*, sulfuric acid plants which emit or have the potential to emit 100 tons per year (tpy) or more of any regulated air pollutant.

15. Under the PSD regulations, at 40 C.F.R. § 52.21(b)(1)(i)(a), “major stationary source” is defined as, *inter alia*, sulfuric acid plants which emit or have the potential to emit 100 tpy per year or more of any regulated air pollutant.

16. Under the PSD regulations, “major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as, any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

17. “Significant” is defined at 40 C.F.R. § 52.21(b)(23)(i) and, as pertinent to this Complaint, means a rate of emissions of SO₂ that would equal or exceed 40 tpy and means a rate of emissions of acid mist that would equal or exceed 7 tpy.

18. “Net emissions increase” is defined at 40 C.F.R. § 52.21(b)(3)(i), as “the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable.”

19. At 40 C.F.R. §§ 52.21(i) and (k), the PSD regulations require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification so that such a source can demonstrate, *inter alia*, that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

20. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology (BACT), as that term is defined at 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

21. As set forth at 40 C.F.R. § 52.21(k), the PSD program requires a person who wishes to construct or modify a major stationary source in an attainment or unclassifiable area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

22. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

23. As set forth in 40 C.F.R. § 52.21(n) the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

24. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

25. A state or regional air authority may comply with Section 161, 42 U.S.C. § 7471, of the Act by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by

EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. All of the states and regional air authorities at issue in this matter have either delegated or approved PSD programs.

Nonattainment New Source Review

26. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth SIP requirements for areas designated as nonattainment for the NAAQS. Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. § 7410(a)(2)(C) and (I), require that each SIP contain a program meeting the requirements of Part D of the Act or the pre-construction review and permitting of new and modified stationary sources located in or near areas designated as “nonattainment” for a criteria pollutant pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d).

27. Part D sets forth attainment goal dates and SIP submissions dates, as well the requirements that each SIP must have to be approved by EPA. The nonattainment NSR permitting program requirements are set forth in Section 173, 42 U.S.C. § 7503, and in the implementing regulations at 40 C.F.R. §§ 52.24, 51.165, and Part 51, Appendix S. The nonattainment NSR requirements include a permit program that allows permits to construct, modify, or operate only if in accordance with regulations issued by EPA; that the source can demonstrate sufficient emission offsets; that the source is required to comply with the lowest achievable emission rate; that the owner or operator of the proposed source can demonstrate that all of its major sources within the state are in compliance with their emission limits; that the nonattainment provisions of the SIP are being properly implemented by the State; and that an analysis of alternatives sites, sizes, production processes and environmental controls has been considered and that the benefits of the proposed source outweigh the environmental and social

costs imposed as a result of the construction or modification. A major source proposing to construct or make a major modification in a nonattainment area may be allowed to construct or modify only if these requirements are met. The requirements are referred to herein as the nonattainment NSR regulations.

28. The nonattainment NSR regulations at 40 C.F.R. §§ 52.24, 51.165 and Part 51, Appendix S, define “major stationary source” as any stationary source of air pollutants that has the potential to emit, 100 tpy or more of any pollutant subject to the Act or any physical change that would occur at a stationary source not qualifying under paragraph (f)(5)(i)(a) of this section, as a major stationary source, if the change would constitute a major stationary source by itself.

29. Under the nonattainment NSR regulations, “major modification” is defined at 40 C.F.R. §§ 52.24(f)(5)(I), 51.165A.5.(i) and Part 51, Appendix S, II, A.5.(i) as meaning, any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

30. “Significant” is defined at 40 C.F.R. §§ 52.24(f)(10), 51.165A.10.(I) and Part 51, Appendix S, II, A.10., and means a rate of emissions of SO₂ that would equal or exceed 40 tpy.

31. “Net emissions increase” is defined at 40 C.F.R. §§ 52.24(f)(6)(i), 51.165A.6.(i) and Part 51, Appendix S, II, A.6., as “the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions [as defined by 40 C.F.R. §§ 52.24(f)(13), 51.165A.13.(I) and Part 51, Appendix S, II, A.10.] from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

32. A state or regional air authority may comply with Sections 172 and 173, 42 U.S.C. §§ 7502 and 7503, of the Act by being delegated by EPA the authority to enforce the federal nonattainment NSR regulations set forth at 40 C.F.R. §§ 52.24, 51.165 and Part 51, Appendix S, or by having its own nonattainment NSR regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.165. As reflected in the relevant sections of 40 C.F.R. Part 52, each of the states or regional air authorities in this matter has adopted nonattainment NSR regulations and EPA has approved them into the relevant SIP.

New Source Performance Standards

33. Section 111(b)(1)(A), 42 U.S.C. § 7411(b)(1)(A), of the Act requires EPA to publish (and periodically revise) a list of categories of stationary sources including those categories that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

34. Once a category is included on the list, Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard (NSPS). Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

35. "Stationary source" is defined at 42 U.S.C. § 7411(a)(3) and the implementing regulations at 40 C.F.R. § 60.2, as a building, structure, facility or installation which emits or may emit any air pollutant.

36. “New sources” as defined at Section 111(a)(2), 42 U.S.C. § 7411(a)(2) are stationary sources, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such source.

37. EPA’s general NSPS provisions at 40 C.F.R. Part 60, Subpart A contain general provisions applicable to all NSPS sources.

38. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

39. 40 C.F.R. § 60.2 defines “affected facility” as any apparatus to which a standard is applicable.

40. EPA promulgated a NSPS for sulfuric acid plants for which construction or modification is commenced after August 17, 1971. These requirements are codified at 40 C.F.R. Part 60, Subpart H, §§ 60.80-85 (NSPS Subpart H).

41. The “affected facility” to which NSPS Subpart H applies is defined at 40 C.F.R. § 60.80 as each “sulfuric acid production unit” for which construction or modification is commenced after August 17, 1971.

42. Under NSPS Subpart H, 40 C.F.R. § 60.81(a), “sulfuric acid production unit” means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge”

43. “Modification” under Section 111(a)(4), 42 U.S.C. 7411(a)(4) and the implementing regulations at 40 C.F.R. § 60.2 and 40 C.F.R. § 60.14(a), is any physical change

in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission into the atmosphere of any air pollutant (to which a standard applies) not previously emitted.

44. Under 40 C.F.R. § 60.2, “existing facility” is “any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard. . . .”

45. Under 40 C.F.R. § 60.14, upon modification, an “existing facility” becomes an “affected facility” for which the applicable NSPS must be satisfied.

46. “Reconstruction” under the NSPS is defined at 40 C.F.R. § 60.15 as “the replacement of components of an existing facility to such an extent that: (1) [t]he fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and (2) it is technologically and economically feasible to meet the applicable standards in this part.”

47. Under 40 C.F.R. § 60.15(a), upon reconstruction, an “existing facility” becomes an “affected facility” for which the applicable the NSPS must be satisfied.

48. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to a NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, postmarked 60 days or as soon as practicable before the change is commenced, with information describing the precise nature of the change, present and proposed emission

control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

49. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility must conduct a performance test within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

50. Pursuant to 40 C.F.R. § 60.82, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain sulfur dioxide in excess of 2 kg per metric ton of acid produced (4.0 lb SO₂ per ton of acid produced), the production being expressed as 100 percent sulfuric acid.

51. Pursuant to 40 C.F.R. § 60.83, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain acid mist, expressed as sulfuric acid, in excess of 0.075 kg per metric ton of acid produced (0.15 lb sulfuric acid per ton of acid produced), the production being expressed as 100 percent sulfuric acid.

52. Pursuant to 40 C.F.R. § 60.84 a source owner or operator of a sulfuric acid production unit must install, calibrate, maintain, and operate a continuous monitoring system for measuring SO₂ emissions.

Title V Permit Program

53. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the

requirements of Title V and establishing the minimum elements of a permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

54. “Major source” is defined in Section 501 of the Act, 42 U.S.C. § 7661(2) and at 40 C.F.R. § 70.2, as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. SO₂ is listed as a regulated air pollutant under 40 C.F.R. § 70.2.

55. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the implementing regulations at 40 C.F.R. § 70.1(b), have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a “major source” except in compliance with a permit issued by a permitting authority under Title V.

56. Section 504(a) of the Act, 42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6a, have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the Act and the requirements of the relevant SIP. “Applicable requirements” as defined at 40 C.F.R. § 70.2 include any relevant PSD, nonattainment NSR, and NSPS requirements.

57. Section 503 of the Act, 42 U.S.C. § 7661b and 40 C.F.R. § 70.5(a), require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application and to determine all applicable requirements (including any requirement to meet applicable control technology

requirements pursuant to PSD or nonattainment NSR and to comply with NSPS), certification of compliance with all applicable requirements, information that may be necessary to determine the applicability of other applicable requirements of the Act and a compliance plan for all applicable requirements for which the source is not in compliance.

58. 40 C.F.R. § 70.5(b) requires that any applicant, who fails to submit any relevant facts or who has submitted incorrect information in a permit application, promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

59. All of the states and regional air authorities at issue in this matter have fully approved Title V programs that are in accordance with the Federal Title V regulations.

Enforcement Provisions

60. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

61. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “[e]xcept for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this

subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section”

62. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for civil penalties against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan, and other requirements of the Act.

GENERAL ALLEGATIONS

63. At all times relevant to this Complaint, Rhodia owned and operated the following sulfuric acid plants: Baton Rouge #1 and #2, Louisiana; Baytown, Texas; Dominguez, California; Hammond, Indiana; Houston #2 and #8, Texas; and Martinez, California (the Plants).

64. At the Plants, Rhodia produces sulfuric acid using the contact process in which elemental sulfur or spent sulfuric acid is burned to form sulfur dioxide, which is then converted to sulfur trioxide and then finally converted to sulfuric acid.

65. At all times relevant to this Complaint, there were emissions of SO₂ and acid mist from the Plants.

66. EPA has conducted investigations of one or more of Rhodia's Plants, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Rhodia concerning construction and operation of such plants. The United States alleges the following based on the results of EPA's investigation, information and belief.

FIRST CLAIM FOR RELIEF
(PSD Violations)

67. Paragraphs 1 through 25, and 60 through 66, are realleged and incorporated herein by reference.

68. Since their initial construction one or more of the Plants emit or have had the potential to emit 100 tpy of SO₂ and are “major emitting facilities” as that term is defined in Section 169(1) of the Act, 42 U.S.C. § 7479(1), and “major stationary sources” as that term is defined in the PSD regulations at 40 C.F.R. § 52.21.

69. Major modifications to some or all of the Plants resulted in significant net emission increases of SO₂ and acid mist as defined by 40 C.F.R. § 52.21(b)(3)(i).

70. Some or all of the Plants are subject to the PSD regulations at 40 C.F.R. Part 52.

71. Since the construction of, or major modification(s) to some or all of the Plants, Rhodia has been in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and the corresponding state implementation plans, by, without limitation, undertaking such construction or major modification(s) and operating the Plants without first obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) (currently 40 C.F.R. § 52.21(a)(2)(iii)); by failing to install and operate BACT for control of SO₂ as required by 40 C.F.R. § 52.21(j); by failing to provide the permitting authorities with all relevant information necessary to perform an analysis of whether any proposed activities will cause or contribute to air pollution and of the ambient air quality in the area as required by 40 C.F.R. § 52.21(k) and (m); and by failing to provide the permitting authorities with all relevant

information necessary to perform an analysis of whether any proposed activities constituted a “major modification,” in violation of the PSD regulations set forth in 40 C.F.R. § 52.21(n).

72. Unless restrained by an order of this Court, the violations of the Act alleged in this First Claim for Relief will continue.

73. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Rhodia to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

SECOND CLAIM FOR RELIEF
(Nonattainment New Source Review Violations)

74. Paragraphs 1 through 11, 26 through 32, and 60 through 66 are realleged and incorporated herein by reference.

75. Since their initial construction one or more of the Plants emit or have had the potential to emit 100 tpy of SO₂ and are “major emitting facilities” as that term is defined in 42 U.S.C. § 7479(1) of the Act and “major stationary sources” as that term is defined in the PSD regulations at 40 C.F.R. §§ 52.24 , 51.165 and Part 51, Appendix S.

76. One or more of the Plants was located in or near a designated nonattainment area (that is now a designated attainment area) and emitted one or more pollutants for which the area was designated nonattainment, and is subject in whole or in part to construction and/or operating

permits issued pursuant to an approved permitting program, including emission limitations and other terms and conditions applicable to criteria pollutants such as SO₂.

77. Since initial construction of or major modification(s) at one or more plants located in or near designated nonattainment areas, Rhodia has operated such plant or plants so as to generate emissions of one or more pollutants for which the area or areas are designated nonattainment, and has engaged in construction activities involving changes in such emissions, air quality impacts, or both.

78. At one or more of the Plants, Rhodia has violated the nonattainment area permitting programs that EPA has approved into the relevant SIPs pursuant to Section 110(a)(2)(C) and (I), 42 U.S.C. § 7410(a)(2)(C) and (I), 40 C.F.R. § 52.24, 40 C.F.R. § 51.165 and Part 51, Appendix S, and the applicable SIP, in one or more of the following ways: by failing to comply with limits, terms and conditions in permits issued pursuant to such programs; by failing to apply for and obtain necessary permits prior to construction; by failing to attain the lowest achievable emission rate; by failing to represent as necessary in its applications the emission levels or air quality consequences of proposed construction; or by failing to provide sufficient information for full assessment of emission fees.

79. Unless restrained by an order of this Court, the violations of the Act alleged in this Second Claim for Relief will continue.

80. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Rhodia to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation

occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

THIRD CLAIM FOR RELIEF
(NSPS Violations)

81. Paragraphs 1 through 11, 33 through 52, and 60 through 66 are realleged and incorporated herein by reference.

82. The Plants are “stationary sources” as that term is defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3) and the implementing regulations at 40 C.F.R. § 60.2.

83. Rhodia is the owner or operator, within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of sulfuric acid production units, within the meaning of 40 C.F.R. § 60.80, located at the Plants.

84. Rhodia commenced construction, modification or reconstruction, as those terms are defined at 40 C.F.R. §§ 60.2, 60.14, and 60.15, respectively, of the sulfuric acid production units at one or more of the Plants after August 17, 1971.

85. Each sulfuric acid production unit at the Plants is a “new source” or an “existing facility” as those terms are defined at 42 U.S.C. § 111(a)(2) and (6), 42 U.S.C. § 7411(a)(2) and (6) and 40 C.F.R. § 60.2. As such, each sulfuric acid production unit at one or more of the Plants is an “affected facility” subject to the NSPS, Subparts A and H, 40 C.F.R. §§ 60.1-60.19 and 60.80-60.85, respectively.

86. Rhodia failed to keep records of and notify EPA of its construction, modification or reconstruction of its affected facilities at one or more of the Plants in violation of 40 C.F.R.

§ 60.7 and applicable SIP requirements.

87. Rhodia failed to conduct a performance test within 180 days after the construction, modification or reconstruction of its affected facilities at one or more of the Plants and to furnish the EPA a written report of the results, in violation of 40 C.F.R. § 60.8 and applicable SIP requirements.

88. Since the construction, modification or reconstruction of the affected facilities at one or more of the Plants, Rhodia has operated the sulfuric acid production units in such a manner that the SO₂ emission limitation of 2 kg per metric ton of acid produced (4.0 lb per ton) has been exceeded, in violation of 40 C.F.R. § 60.82 and applicable SIP requirements.

89. Since the construction, modification or reconstruction of the affected facilities at one or more of the Plants, Rhodia has operated the sulfuric acid production unit in such a manner that the acid emission limitation of 0.075 kg per metric ton of acid produced (0.15 lb per ton) has been exceeded, in violation of 40 C.F.R. § 60.83 and applicable SIP requirements.

90. The sulfuric acid production units at one or more of the Plants are in violation of 40 C.F.R. § 60.13, 40 C.F.R. § 60.84 and the applicable SIP requirements in that they are not equipped with a properly installed, calibrated, and maintained continuous emission monitor which meets Performance Specification 2 in 40 C.F.R. Part 60 Appendix B.

91. Unless restrained by an order of this Court, the violations of the Act alleged in this Third Claim for Relief will continue.

92. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Rhodia to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between

January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

FOURTH CLAIM FOR RELIEF
(Title V Permit Program Violations)

93. Paragraphs 1 through 11, 53 through 59, and 60 through 66 are realleged and incorporated herein by reference.

94. At all times relevant to this complaint, one or more of the Plants were a “major source” within the meaning of Section 501(2) of the Act, 42 U.S.C. § 7661(2), and the implementing regulations at 40 C.F.R. § 70.2.

95. One or more of the Plants are subject to the Title V permitting requirements in 40 C.F.R. Part 70.

96. Rhodia commenced construction or major modifications of one or more of the Plants as defined under the PSD and nonattainment NSR regulations at 40 C.F.R. Part 52.

97. Rhodia commenced construction, modification or reconstruction of one or more of the Plants as defined under the NSPS regulations at 40 C.F.R. Part 60.

98. Subsequently, Rhodia failed to submit a complete application for Title V operating permits and annual compliance certifications for one or more of the Plants that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance with Sections 502 and 503 of the Act, 42 U.S.C. §§ 7661a and b,

the implementing regulations promulgated at 40 C.F.R. Parts 70 and 71, and the applicable SIP requirements.

99. Unless restrained by an order of this Court, the violations of the Act alleged in this Fourth Claim for Relief will continue.

100. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Rhodia to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 100 above, the United States of America requests that this Court:

1. Permanently enjoin Rhodia from operating the sulfuric acid production units at the Plants, including the construction of future modifications or reconstructions, except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Order Rhodia to remedy its past violations by, among other things, requiring Rhodia to install, as appropriate, the best available control technology, or such other emissions control technology required by law, on the sulfuric acid production units at the Plants for each pollutant subject to regulation under the Clean Air Act;

3. Order Rhodia to apply for permits that are in conformity with the requirements of the Clean Air Act and SIP requirements;
4. Order Rhodia to comply with the NSPS provisions of the Act;
5. Assess a civil penalty against Rhodia of up to \$25,000 per day for each violation of the Act occurring prior to January 30, 1997; up to \$27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004; and up to \$32,500 for each violation of the Act occurring after March 15, 2004;
8. Award Plaintiff its costs of this action; and,
9. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

MATTHEW J. McKEOWN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

STEVE C. GOLD
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 514-5260
Facsimile: (202) 616-6584

CYNTHIA A. KING

Special Trial Attorney, U.S. Department
of Justice

United States Environmental Protection
Agency

77 West Jackson Blvd.

C-14J

Chicago, IL 60604

Phone: (312) 886-6831

Facsimile: (312) 886-0747

JOSEPH V. BOKKELEN

United States Attorney

Northern District of Indiana

WAYNE AULT

Assistant United States Attorney

5400 Federal Plaza, Suite 1500

Hammond, Indiana 46320

Phone: (219) 937-5500

Facsimile: (219) 852-2770